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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,329	09/23/2003	John Hane	57132.000008	1653

21967 7590 04/01/2009

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EXAMINER

SHIFERAW, ELENI A

ART UNIT	PAPER NUMBER
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2436

MAIL DATE	DELIVERY MODE
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04/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/667,329	Applicant(s) HANE, JOHN	
	Examiner ELENI A. SHIFERAW	Art Unit 2436	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-7,11-13,17,18 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11-13,17,18 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 1, 5-7, 11-13, 17-18 and 24-26 are pending.
2. Claims 19-23 are withdrawn.

Response to Arguments and amendments

3. Applicant's arguments and amendments filed on 01/26/2009 are fully considered but are not persuasive.

Regarding argument "the office bears the burden of establishing a prima facie case of obviousness ... a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art.... rather must still be some reason that would have prompted a person ordinary skill in the art to combine the elements..." remark page 10-11, argument is not persuasive because sufficient and reasonable motivation to combine the applied references is provided.

Regarding argument Kikinis failure to disclose, or even suggest, a method for requesting and securely receiving data from the Internet comprising "selecting and addressing said second set of data packets for transmission at a second transmission time via a satellite delivery system, wherein the second transmission time is different from the first transmission time, and automatically attaching a second address to said second set of data packets," remark page 11 par. 2, as recited in claim 1, argument is not persuasive because: First, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

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Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Second, Kikinis discloses a data delivery system, comprising a server connected to data sources and adapted to transmit data to a user; **a first link from the server adapted to transmit data to the user via a first delivery path; a second link from the server adapted to transmit data via a second delivery path to the user**,.... For each data entity to be transmitted to the user, the transmission control routines **select either the first path or the second path for transmission, based on size of the data entity and preprogrammed criteria**. In a preferred embodiment the first path is a land-based path, and the second path is a satellite transmission path (*see col. 2 lines 54-67*). Kikinis on col. 3 lines 47-57 discloses the land-based path being land based internet connection through a public-switched telephone network. Kikinis further discloses encrypting the data and transmitting a deciphering key to user by a separate path than the encrypted data is sent (*see col. 3 lines 7-9*). Kikinis appropriately prepares encrypted data packet and key packet and delivers to requesting user device address (see col. 6 lines 28-47). If the encrypted data packet and key packet did not have address information attached to, they wouldn't have been delivered to the requesting user device. The applicant agrees that the encrypted data is delivered via different transmission path (remark page 11), if the data packets are not attaching address, they would not know which path to go to. Transmitting an encrypted content data packet with first address over a first path and transmitting a key that is used to encrypt the content and has a second address via a different path with a transmission time that is different from the first eg. in hours or days apart, is disclosed by Kamiya et al. (see par. 0023-0025 and 0006-0012).

Regarding argument Kikinis failure to teach “packetizing said collected data into at least two sets of data packets, wherein a first set of data packets comprises encrypted data and a

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second set of data packets comprises a key for decoding said encrypted data," remark page 12 par. 1, argument is not persuasive because Kikinis clearly discloses preparing and transmitting encrypted data and deciphering key separately (see col. 6 lines 30-47, col. 5 lines 7-16, col. 2 lines 54-67 and col. 3 lines 47-57).

Regarding argument Kikinis failure to disclose or mention "the key is transmitted via a satellite system to user" remark page 12 par. 2, argument is not persuasive because Kikinis teaches latency period (time it takes to get to user) and decides either of the path internet land based or satellite path (see col. 6 lines 16-47, col. 2 lines 54-65, col. 3 lines 7-9 and col. 5 lines 7-16, decryption key). It is clear that the key is delivered in either path since Kikinis teaches transmitting encrypted data and decryption key in a separate path based on the determination method (see col. 3 lines 7-9).

Regarding argument Kamaya teaches away from Kikinis and would not have been obvious to combine the two references, remark page 13 par. 1, argument is not persuasive because they are analogous in secure data transmission system in two different channels and/or encrypted data is transmitted via a first channel and a key used to encrypted the data is transmitted via in a different channel and sufficient motivation to combine is properly provided.

Regarding argument Kamaya delivering content data and key in a different times unlike to Kikinis that transmits in two different channels and would not have been obvious remark page 13 last par.-page 14 par. 1st, argument is not persuasive because as originally cited by the office Kamaya is not only transmitting encrypted data and keys in different times but also delivering key via downstream system i.e. routes different from those that carry the encrypted digital data

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or content. All delivery routes are made different or separate from one other either physically or temporally (see par. 0007 and 0025-0026). Therefore it would have been obvious.

Regarding argument it would not have been obvious to combine the references because Kikinis teaches internet and satellite delivery and Kamaya discloses high speed multipoint delivery system..., argument is not persuasive because Kamaya teaches transmitting key via a separate routing channel for securely providing data to users and Kikinis also discloses transmitting a key via a different channel than the data sent to securely provide data to users. Therefore it would have been obvious.

Regarding argument the reference failure to teach "selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency," remark page 15-16, argument is not persuasive because: First, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Second, Kikinis discloses a data delivery system, comprising a server connected to data sources and adapted to transmit data to a user; **a first link from the server adapted to transmit data to the user via a first delivery path; a second link from the server adapted to transmit data via a second delivery path to the user,...** For each data entity to be transmitted to the user, the transmission control routines **select either the first path or the second path for transmission, based on size of the data entity and preprogrammed criteria.** In a preferred embodiment the first path is a land-based path, and the second path is a satellite transmission path (*see col. 2 lines 54-67*). Kikinis on col. 3 lines 47-57 discloses the land-based path being land based internet connection through

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a public-switched telephone network. Kikinis further discloses encrypting the data and transmitting a deciphering key to user by a separate path than the encrypted data is sent (*see col. 3 lines 7-9*). Kikinis appropriately prepares encrypted data packet and key packet and delivers to requesting user device address (see col. 6 lines 28-47). If the encrypted data packet and key packet did not have address information attached to, they wouldn't have been delivered to the requesting user device. The applicant agrees that the encrypted data is delivered via different transmission path (remark page 11), if the data packets are not attaching address, they would not know which path to go to. Transmitting an encrypted content data packet with first address over a first path and transmitting a key that is used to encrypt the content and has a second address via a different path with a transmission time that is different from the first eg. in hours or days apart, is disclosed by Kamiya et al. (see par. 0023-0025 and 0006-0012).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1, 5-7, 11-13, 17-18 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikinis (US Patent 6,289,389) in view of Kamiya et al. 2002/0106086 A1.**

Regarding claims 1, 7, and 13, Kikinis teaches

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- a method for requesting and securely receiving data from the Internet (**col. 2 lines 54-67 and fig. 3**), said method comprising the steps of:
 - receiving a request for data (**col. 1, lines 5-10, data requested by a user**);
 - collecting data in response to said request (**col. 1, lines 5-10, data gathering site**);
 - packetizing said collected data into at least two sets of data packets (**col. 6, lines 30-47, encrypted data and decryption key**),
 - wherein a first set of data packets comprises encrypted data (**col. 6, lines 30-47, encrypted data**) and a second set of data packets comprises a key for decoding said encrypted data (**col. 6 lines 16-47, col. 2 lines 54-65, col. 3 lines 7-9 and col. 5 lines 7-16, decryption key**);
 - selecting and addressing a first set of data packets for transmission via the Internet, and automatically attaching a first address to said first set of data packets (**see col. 3 lines 46-56, col. 3 lines 7-9 and col. 6, lines 30-47, through modem**);
 - selecting and addressing a second set of data packets for transmission via a satellite delivery system and automatically attaching a second address to said second set of data packet (**see col. 3 lines 46-56, col. 3 lines 7-9, and col. 6, lines 30-47, through digital link to satellite**);
 - transmitting said first set of data packets via the Internet (**col. 6, lines 30-47 and col. 3 lines 46-56, through modem/internet connection through a public switched telephone network**); and

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- transmitting said second set of data packets via said satellite delivery system (**col. 6, lines 30-47, through digital link to satellite**).
- Kikinis fails to explicitly disclose first data packets for transmission at a first transmission time and a second set of data packets for transmission at a second transmission time wherein the second transmission time is different from the first transmission time.
- However transmitting an encrypted content data packet with first address over a first path and transmitting a key that is used to encrypt the content and has a second address via a different path with a transmission time that is different from the first eg. in hours or days apart, is disclosed by Kamiya et al. (see par. 0023-0025 and 0006-0012). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the teachings within the system of Kikinis because they are analogous in secure content distribution in multiple channel. One would have been obvious to do so because it would prevent hackers from intercepting the transmitted data and find all the information (key and content) in one single interception and retrieve data and would make it difficult to hackers to intrude transmitted data.

Regarding claims 24, 25 and 26 Kikinis discloses a method for requesting and securely receiving data from the Internet (**col. 2 lines 54-67 and fig. 3**), said method comprising the steps of:

receiving a request for data (**col. 1, lines 5-10 and fig. 3, data requested by a user**);

collecting data in response to said request (**col. 1, lines 5-10, data gathering site**);

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packetizing said collected data into at least two sets of data packets (**col. 6, lines 30-47, encrypted data and decryption key**);

wherein a first set of data packets comprises encrypted data (**col. 6, lines 30-47, encrypted data**) and a second set of data packets comprises a key for decoding said encrypted data (**col. 6, lines 30-47, decryption key**) selecting and addressing said first set of data packets for transmission via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets (**see col. 3 lines 46-56, col. 3 lines 7-9, and col. 6, lines 30-47, through modem**);

selecting and addressing said second set of data packets for transmission via a second channel of the transmission mode at a second frequency, wherein the second frequency is different from the first frequency (**see col. 3 lines 46-56, col. 3 lines 7-9, and col. 6, lines 30-47, through digital link to satellite**);

transmitting said first set of data packets via said first channel (**col. 6, lines 30-47, through modem**); and

transmitting said second set of data packets via said second channel (**col. 6, lines 30-47, through digital link to satellite**).

- Kikinis fails to disclose first data packets for transmission at a first transmission time and a second set of data packets for transmission at a second transmission time wherein the second transmission time is different from the first transmission time.

- However transmitting a encrypted content data packet with first address over a first path via a first channel of a transmission mode and transmitting a key that is used to encrypt the content and has a second address via a different path channel of the transmission mode with a transmission time that is different from the first eg. in hours or days apart, is disclosed by Kamiya et al. (see par. 0023-0025 and 0006-0012). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ the teachings within the system of Kikinis because they are analogous in secure content distribution in different transmission channel. One would have been obvious to do so because it would prevent hackers from intercepting the transmitted data and find all the information (key and content) in one single interception and retrieve data and would make it difficult to hackers to intrude transmitted data.

Regarding claims 5, 11, and 17, Kikinis teaches wherein said satellite delivery system is comprised of a network processing center with an associated provider antenna and at least one subscriber terminal with an associated subscriber antenna (**fig. 1, 23, 45**).

Regarding claims 6, 12, and 18, Kikinis teaches wherein said satellite delivery system further comprises a satellite (**fig. 1, 37**).

Conclusion

6. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the

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specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELEN I. SHIFERAW whose telephone number is (571)272-3867. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser R. Moazzami can be reached on (571) 272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Eleni A Shiferaw/

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